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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,173	02/06/2006	Karsten Ruth	Umicore 0143-US	4535
23719 7590 08/06/2009 KALOW & SPRINGUT LLP 488 MADISON AVENUE 19TH FLOOR NEW YORK, NY 10022				
EXAMINER				
THOMAS, BRENT C				
ART UNIT		PAPER NUMBER		
1795				
MAIL DATE		DELIVERY MODE		
08/06/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/541,173

Applicant(s)

RUTH ET AL.

Examiner

BRENT THOMAS

Art Unit

1795

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 10-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 17-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date 6/21/2007, 6/30/2005
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group I in the reply filed on 7/08/2009 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-9, 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Hitomi et al. (US pg pub 2002/0019308 A1 hereafter Hitomi).

4. With regard to claim 1, Hitomi teaches an electrode for a fuel cell comprising a porous support material with catalyst particles distributed over the surface [0001, 0075, 0076] by techniques such as screen printing and spraying (which would distribute the coating evenly) [0075]. Hitomi further teaches that the porous support material acts as a gas diffusion layer [0076].

5. With regard to claim 2, Hitomi teaches that the catalyst is dispersed into a paste, applied to the substrate, and dried (which would immobilize the catalyst) [0075].
6. With regard to claim 3, Hitomi teaches an average platinum (catalyst) particle size of 2.4 nm, which falls within the claimed range [0079].
7. With regard to claim 4, Hitomi teaches Pt, Pd, Ru, Rh, and Ir as catalysts [0056].
8. With regard to claim 5, Hitomi teaches a concentration per unit area of 1 mg/cm², which falls within the claimed range [0079].
9. With regard to claim 6, Hitomi teaches carbon paper as a porous support material [0075].
10. With regard to claims 7-9, claims 7-9 are drawn to intended use of the catalyst containing layer. Since the catalyst containing layer of Hitomi is substantially similar to the layer of the instant application, as shown in the rejections of claims 1-6 above, it should inherently be compatible with the same applications. See MPEP 2111.02 II.
11. With regard to claim 17-19, Hitomi teaches the application of the catalyst containing layer as part of an electrode in a fuel cell [0001, 0075]. The application of the fuel cell is intended use. Since the catalyst containing layer of Hitomi is substantially similar to the layer of the instant application, as shown in the rejections of claims 1-6 above, it should inherently be compatible with the same applications. See MPEP 2111.02 II.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRENT THOMAS whose telephone number is (571)270-7737. The examiner can normally be reached on Monday - Thursday, 9:00am-6:00pm (est.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, PATRICK RYAN can be reached on (571)272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BT

/PATRICK RYAN/
Supervisory Patent Examiner, Art Unit 1795